



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1995

Mr. Patrick C. Bernal
Denton, McKamie & Navarro
310 South Saint Mary's Street, Suite 1700
San Antonio, Texas 78205-3108

OR95-972

Dear Mr. Bernal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 34316.

The City of Eagle Pass (the "city") received a request for information concerning an "alleged retaliation against a local newspaper by the city and its governing body for choosing a competing newspaper as the official newspaper under Texas law for the purpose of publishing legal notice."¹ The requestor specifically asks for receipt books showing payments made for copies of public records, requests for public records, and copies of public records requests made by specific individuals. On behalf of the city you assert that such information is excepted from required public disclosure pursuant to section 552.103(a) of the Government Code, otherwise known as the litigation section.²

¹You have advised us that the first request for these records was made on June 8, 1995. Your request for an opinion from this office was postmarked June 16, 1995 and therefore appears timely. The requestor alleges, however, that the first request for this information was made July 29, 1994. We note that section 552.301 requires a governmental body to release the requested information or to request a decision from the attorney general within ten days of receiving the open records request if it is information the body wishes to withhold. If the governmental body fails to request a decision within ten days of receiving the open records request, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316 (Tex. App.—Houston [1st Dist.] 1984, no writ); *Open Records Decision No. 319* (1982).

²Correspondence submitted to this office indicates that there has been some confusion concerning when and what types of records of a public meeting are public documents that must be released to the requestor. Handwritten notes intended to be typewritten minutes are public documents. Open Records

Section 552.103(a) excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't Code § 552.103(a). More specifically, section 552.103(a) excepts from required public disclosure, information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or maybe a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from required public inspection.

Section 552.103(a) is designed to keep the Open Records Act from operating as a method of avoiding the rules of discovery. Attorney General Opinion JM-1048 (1989) at 4. In Open Records Decision No. 551 (1990) at 3, this office stated:

[Section 552.103] enables governmental entities to protect their position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. [citations omitted.] We do not believe that the Open Records Act was intended to provide parties involved in litigation any earlier or greater access to information than was already available directly in such litigation.

Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 516 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 588 (contested case under Administrative Procedure Act is litigation for purpose of section 552.103 exception). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

(Footnote continued)

Decision No. 225 (1979). Tape recordings of a public meeting are public documents. Attorney General Opinion JM-1143 (1990); Open Records Decision Nos. 225(1979), 221 (1979). Minutes of a public meeting that have not yet been formally introduced by the governmental body are also public documents that must be released. Open Records Decision No. 225 (1979).

A review of the documents submitted reveals that the requested documents concern pending litigation in the United States District Court for the Western District of Texas, Del Rio Division styled *ZYZY Inc., and ZYZY, Inc., d/b/a Guide Publishing Company, and Rex S. McBeath, Individually v. The City of Eagle Pass, Texas, Raul Trevino, Individually, Jose Mora, Individually, Jose Francisco Farias, Individually, Raul Trevino, Jose Mora, and Jose Francisco Farias, in Their Official Capacities*, Cause No. DR-94-CA-70. Therefore, we conclude that such information may be withheld in its entirety pursuant to section 552.103(a) of the act.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Open Records Division

TCC/RHS/ch

Ref: ID# 34316

Enclosures: Submitted documents

cc: Mr. Rex McBeath
Publisher
The Guide Publishing Company
P.O. Box 764
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(w/o enclosures)

³The requestor asserts that he has already seen some of the information at issue, and that other requestors are being provided the same information that is at issue. We note that section 552.103(a) is not applicable to information that has previously been disclosed to an opposing party in the litigation. We also note that the Open Records Act prohibits selective disclosure of information. Gov't Code § 552.007.